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HOUSE BILL 1276

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY
Joseph Cervantes

AN ACT

RELATING TO ANATOMICAL GIFTS; ENACTING THE REVISED UNIFORM ANATOMICAL GIFT ACT; REVISING STATUTORY REFERENCES; REPEALING THE UNIFORM ANATOMICAL GIFT ACT; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1 through 25 of this act may be cited as the "Revised Uniform Anatomical Gift Act".

Section 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the Revised Uniform Anatomical Gift Act:

A. "adult" means an individual who is at least eighteen years of age;

B. "agent" means an individual:

(1) authorized to make health care decisions on the principal's behalf by a power of attorney for health

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1 care; or

2 (2) expressly authorized to make an anatomical
3 gift on the principal's behalf by any other record signed by
4 the principal;

5 C. "anatomical gift" means a donation of all or
6 part of a human body to take effect after the donor's death for
7 the purpose of transplantation, therapy, research or education;

8 D. "decedent" means a deceased individual whose
9 body or part is or may be the source of an anatomical gift.
10 "Decedent" includes a stillborn infant and, subject to
11 restrictions imposed by law other than the Revised Uniform
12 Anatomical Gift Act, a fetus;

13 E. "disinterested witness" means a witness other
14 than the spouse, child, parent, sibling, grandchild,
15 grandparent or guardian of the individual who makes, amends,
16 revokes or refuses to make an anatomical gift, or another adult
17 who exhibited special care and concern for the individual.
18 "Disinterested witness" does not include a person to which an
19 anatomical gift could pass pursuant to Section 11 of the
20 Revised Uniform Anatomical Gift Act;

21 F. "document of gift" means a donor card or other
22 record used to make an anatomical gift. "Document of gift"
23 includes a statement or symbol on a driver's license,
24 identification card or donor registry;

25 G. "donor" means an individual whose body or part

1 is the subject of an anatomical gift;

2 H. "donor registry" means a database that contains
3 records of anatomical gifts and amendments to or revocations of
4 anatomical gifts;

5 I. "driver's license" means a license or permit
6 issued by the motor vehicle division of the taxation and
7 revenue department to operate a vehicle, whether or not
8 conditions are attached to the license or permit;

9 J. "eye bank" means a person that is licensed,
10 accredited or regulated pursuant to federal or state law to
11 engage in the recovery, screening, testing, processing, storage
12 or distribution of human eyes or portions of human eyes;

13 K. "guardian" means a person appointed by a court
14 to make decisions regarding the support, care, education,
15 health or welfare of an individual. "Guardian" does not
16 include a guardian ad litem;

17 L. "hospital" means a facility licensed as a
18 hospital pursuant to the law of any state or a facility
19 operated as a hospital by the United States, a state or a
20 subdivision of a state;

21 M. "identification card" means an identification
22 card issued by the motor vehicle division of the taxation and
23 revenue department;

24 N. "know" means to have actual knowledge;

25 O. "minor" means an individual who is under

1 eighteen years of age;

2 P. "organ procurement organization" means a person
3 designated by the secretary of the federal department of health
4 and human services as an organ procurement organization;

5 Q. "parent" means a parent whose parental rights
6 have not been terminated;

7 R. "part" means an organ, an eye or tissue of a
8 human being. "Part" does not include the whole body;

9 S. "person" means an individual, corporation,
10 business trust, estate, trust, partnership, limited liability
11 company, association, joint venture, public corporation,
12 government or governmental subdivision, agency or
13 instrumentality, or any other legal or commercial entity;

14 T. "physician" means an individual authorized to
15 practice medicine or osteopathy pursuant to the law of any
16 state;

17 U. "procurement organization" means an eye bank,
18 organ procurement organization or tissue bank;

19 V. "prospective donor" means an individual who is
20 dead or near death and has been determined by a procurement
21 organization to have a part that could be medically suitable
22 for transplantation, therapy, research or education.
23 "Prospective donor" does not include an individual who has made
24 a refusal;

25 W. "reasonably available" means able to be

1 contacted by a procurement organization without undue effort
2 and willing and able to act in a timely manner consistent with
3 existing medical criteria necessary for the making of an
4 anatomical gift;

5 X. "recipient" means an individual into whose body
6 a decedent's part has been or is intended to be transplanted;

7 Y. "record" means information that is inscribed on
8 a tangible medium or that is stored in an electronic or other
9 medium and is retrievable in perceivable form;

10 Z. "refusal" means a record created pursuant to
11 Section 7 of the Revised Uniform Anatomical Gift Act that
12 expressly states an intent to bar other persons from making an
13 anatomical gift of an individual's body or part;

14 AA. "sign" means, with the present intent to
15 authenticate or adopt a record:

16 (1) to execute or adopt a tangible symbol; or

17 (2) to attach to or logically associate with
18 the record an electronic symbol, sound or process;

19 BB. "state" means a state of the United States, the
20 District of Columbia, Puerto Rico, the United States Virgin
21 Islands or any territory or insular possession subject to the
22 jurisdiction of the United States;

23 CC. "technician" means an individual determined to
24 be qualified to remove or process parts by an appropriate
25 organization that is licensed, accredited or regulated pursuant

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1 to federal or state law. "Technician" includes an enucleator;

2 DD. "tissue" means a portion of the human body
3 other than an organ or an eye. "Tissue" does not include blood
4 unless the blood is donated for the purpose of research or
5 education;

6 EE. "tissue bank" means a person that is licensed,
7 accredited or regulated pursuant to federal or state law to
8 engage in the recovery, screening, testing, processing, storage
9 or distribution of tissue; and

10 FF. "transplant hospital" means a hospital that
11 furnishes organ transplants and other medical and surgical
12 specialty services required for the care of transplant
13 patients.

14 Section 3. [NEW MATERIAL] APPLICABILITY.--The Revised
15 Uniform Anatomical Gift Act applies to an anatomical gift or
16 amendment to, revocation of or refusal to make an anatomical
17 gift, whenever made.

18 Section 4. [NEW MATERIAL] WHO MAY MAKE ANATOMICAL GIFT
19 BEFORE DONOR'S DEATH.--Subject to the provisions of Section 8
20 of the Revised Uniform Anatomical Gift Act, an anatomical gift
21 of a donor's body or part may be made during the life of the
22 donor for the purpose of transplantation, therapy, research or
23 education in the manner provided in Section 5 of the Revised
24 Uniform Anatomical Gift Act by:

25 A. the donor, if the donor is an adult or if the

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- 1 donor is a minor and is:
- 2 (1) emancipated; or
- 3 (2) authorized pursuant to state law to apply
- 4 for an instruction permit because the donor is at least fifteen
- 5 years of age;
- 6 B. an agent of the donor, unless the power of
- 7 attorney for health care or other record prohibits the agent
- 8 from making an anatomical gift;
- 9 C. a parent of the donor, if the donor is an
- 10 unemancipated minor; or
- 11 D. the donor's guardian.

12 Section 5. [NEW MATERIAL] MANNER OF MAKING ANATOMICAL
13 GIFT BEFORE DONOR'S DEATH.--

- 14 A. A donor may make an anatomical gift:
- 15 (1) by authorizing a statement or symbol
- 16 indicating that the donor has made an anatomical gift to be
- 17 imprinted on the donor's driver's license or identification
- 18 card;
- 19 (2) in a will;
- 20 (3) during a terminal illness or injury of the
- 21 donor, by any form of communication addressed to at least two
- 22 adults, at least one of whom is a disinterested witness; or
- 23 (4) as provided in Subsection B of this
- 24 section.
- 25 B. A donor or other person authorized to make an

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1 anatomical gift pursuant to Section 4 of the Revised Uniform
2 Anatomical Gift Act may make a gift by a donor card or other
3 record signed by the donor or other person making the gift or
4 by authorizing that a statement or symbol indicating that the
5 donor has made an anatomical gift be included on a donor
6 registry. If the donor or other person is physically unable to
7 sign a record, the record may be signed by another individual
8 at the direction of the donor or other person and shall:

9 (1) be witnessed by at least two adults, at
10 least one of whom is a disinterested witness, who have signed
11 at the request of the donor or the other person; and

12 (2) state that it has been signed and
13 witnessed as provided in Paragraph (1) of this subsection.

14 C. Revocation, suspension, expiration or
15 cancellation of a driver's license or identification card upon
16 which an anatomical gift is indicated does not invalidate the
17 gift.

18 D. An anatomical gift made by will takes effect
19 upon the donor's death whether or not the will is probated.
20 Invalidation of the will after the donor's death does not
21 invalidate the anatomical gift.

22 Section 6. [NEW MATERIAL] AMENDING OR REVOKING ANATOMICAL
23 GIFT BEFORE DONOR'S DEATH.--

24 A. Subject to the provisions of Section 8 of the
25 Revised Uniform Anatomical Gift Act, a donor or other person

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1 authorized to make an anatomical gift pursuant to Section 4 of
2 that act may amend or revoke an anatomical gift by:

3 (1) a record signed by:

4 (a) the donor;

5 (b) the other person; or

6 (c) subject to the provisions of

7 Subsection B of this section, another individual acting at the
8 direction of the donor or the other person if the donor or
9 other person is physically unable to sign; or

10 (2) a later-executed document of gift that
11 amends or revokes a previous anatomical gift or portion of an
12 anatomical gift, either expressly or by inconsistency.

13 B. A record signed pursuant to Subparagraph (c) of
14 Paragraph (1) of Subsection A of this section shall:

15 (1) be witnessed by at least two adults, at
16 least one of whom is a disinterested witness, who have signed
17 at the request of the donor or the other person; and

18 (2) state that it has been signed and
19 witnessed as provided in Paragraph (1) of this subsection.

20 C. Subject to the provisions of Section 8 of the
21 Revised Uniform Anatomical Gift Act, a donor or other person
22 authorized to make an anatomical gift pursuant to Section 4 of
23 that act may revoke an anatomical gift by the destruction or
24 cancellation of the document of gift, or the portion of the
25 document of gift used to make the gift, with the intent to

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1 revoke the gift.

2 D. A donor may amend or revoke an anatomical gift
3 that was not made in a will by any form of communication during
4 a terminal illness or injury addressed to at least two adults,
5 at least one of whom is a disinterested witness.

6 E. A donor who makes an anatomical gift in a will
7 may amend or revoke the gift in the manner provided for
8 amendment or revocation of wills or as provided in Subsection A
9 of this section.

10 Section 7. [NEW MATERIAL] REFUSAL TO MAKE ANATOMICAL
11 GIFT--EFFECT OF REFUSAL.--

12 A. An individual may refuse to make an anatomical
13 gift of the individual's body or part by:

14 (1) a record signed by:

15 (a) the individual; or

16 (b) subject to the provisions of
17 Subsection B of this section, another individual acting at the
18 direction of the individual if the individual is physically
19 unable to sign;

20 (2) the individual's will, whether or not the
21 will is admitted to probate or invalidated after the
22 individual's death; or

23 (3) any form of communication made by the
24 individual during the individual's terminal illness or injury
25 addressed to at least two adults, at least one of whom is a

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1 disinterested witness.

2 B. A record signed pursuant to Subparagraph (b) of
3 Paragraph (1) of Subsection A of this section shall:

4 (1) be witnessed by at least two adults, at
5 least one of whom is a disinterested witness, who have signed
6 at the request of the individual; and

7 (2) state that it has been signed and
8 witnessed as provided in Paragraph (1) of this subsection.

9 C. An individual who has made a refusal may amend
10 or revoke the refusal:

11 (1) in the manner provided in Subsection A of
12 this section for making a refusal;

13 (2) by subsequently making an anatomical gift
14 pursuant to Section 5 of the Revised Uniform Anatomical Gift
15 Act that is inconsistent with the refusal; or

16 (3) by destroying or canceling the record
17 evidencing the refusal, or the portion of the record used to
18 make the refusal, with the intent to revoke the refusal.

19 D. Except as otherwise provided in Subsection H of
20 Section 8 of the Revised Uniform Anatomical Gift Act, in the
21 absence of an express, contrary indication by the individual
22 set forth in the refusal, an individual's unrevoked refusal to
23 make an anatomical gift of the individual's body or part bars
24 all other persons from making an anatomical gift of the
25 individual's body or part.

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1 Section 8. [NEW MATERIAL] PRECLUSIVE EFFECT OF ANATOMICAL
2 GIFT, AMENDMENT OR REVOCATION.--

3 A. Except as otherwise provided in Subsection G of
4 this section and subject to the provisions of Subsection F of
5 this section, in the absence of an express, contrary indication
6 by the donor, a person other than the donor is barred from
7 making, amending or revoking an anatomical gift of a donor's
8 body or part if the donor made an anatomical gift of the
9 donor's body or part pursuant to Section 5 of the Revised
10 Uniform Anatomical Gift Act or an amendment to an anatomical
11 gift of the donor's body or part pursuant to Section 6 of that
12 act.

13 B. A donor's revocation of an anatomical gift of
14 the donor's body or part pursuant to Section 6 of the Revised
15 Uniform Anatomical Gift Act is not a refusal and does not bar
16 another person specified in Section 4 or 9 of that act from
17 making an anatomical gift of the donor's body or part pursuant
18 to Section 5 or 10 of that act.

19 C. If a person other than the donor makes an
20 unrevoked anatomical gift of the donor's body or part pursuant
21 to Section 5 of the Revised Uniform Anatomical Gift Act or an
22 amendment to an anatomical gift of the donor's body or part
23 pursuant to Section 6 of that act, another person may not make,
24 amend or revoke the gift of the donor's body or part pursuant
25 to Section 10 of that act.

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1 D. A revocation of an anatomical gift of a donor's
2 body or part pursuant to Section 6 of the Revised Uniform
3 Anatomical Gift Act by a person other than the donor does not
4 bar another person from making an anatomical gift of the body
5 or part pursuant to Section 5 or 10 of that act.

6 E. In the absence of an express, contrary
7 indication by the donor or other person authorized to make an
8 anatomical gift pursuant to Section 4 of the Revised Uniform
9 Anatomical Gift Act, an anatomical gift of a part is neither a
10 refusal to give another part nor a limitation on the making of
11 an anatomical gift of another part at a later time by the donor
12 or another person.

13 F. In the absence of an express, contrary
14 indication by the donor or other person authorized to make an
15 anatomical gift pursuant to Section 4 of the Revised Uniform
16 Anatomical Gift Act, an anatomical gift of a part for one or
17 more of the purposes set forth in Section 4 of that act is not
18 a limitation on the making of an anatomical gift of the part
19 for any of the other purposes by the donor or any other person
20 pursuant to Section 5 or 10 of that act.

21 G. If a donor who is an unemancipated minor dies, a
22 parent of the donor who is reasonably available may revoke or
23 amend an anatomical gift of the donor's body or part.

24 H. If an unemancipated minor who signed a refusal
25 dies, a parent of the minor who is reasonably available may

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1 revoke the minor's refusal.

2 Section 9. [NEW MATERIAL] WHO MAY MAKE ANATOMICAL GIFT OF
3 DECEDENT'S BODY OR PART.--

4 A. Subject to the provisions of Subsections B and C
5 of this section and unless barred by Section 7 or 8 of the
6 Revised Uniform Anatomical Gift Act, an anatomical gift of a
7 decedent's body or part for purpose of transplantation,
8 therapy, research or education may be made by any member of the
9 following classes of persons who is reasonably available, in
10 the order of priority listed:

11 (1) an agent of the decedent at the time of
12 death who could have made an anatomical gift pursuant to
13 Subsection B of Section 4 of the Revised Uniform Anatomical
14 Gift Act immediately before the decedent's death;

15 (2) the spouse of the decedent;

16 (3) adult children of the decedent;

17 (4) parents of the decedent;

18 (5) adult siblings of the decedent;

19 (6) adult grandchildren of the decedent;

20 (7) grandparents of the decedent;

21 (8) an adult who exhibited special care and
22 concern for the decedent;

23 (9) the persons who were acting as the
24 guardians of the person of the decedent at the time of death;
25 and

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1 (10) any other person having the authority to
2 dispose of the decedent's body.

3 B. If there is more than one member of a class
4 listed in Paragraphs (1), (3), (4), (5), (6), (7) and (9) of
5 Subsection A of this section entitled to make an anatomical
6 gift, an anatomical gift may be made by a member of the class
7 unless that member or a person to which the gift may pass
8 pursuant to Section 11 of the Revised Uniform Anatomical Gift
9 Act knows of an objection by another member of the class. If
10 an objection is known, the gift may be made only by a majority
11 of the members of the class who are reasonably available.

12 C. A person may not make an anatomical gift if, at
13 the time of the decedent's death, a person in a prior class
14 pursuant to Subsection A of this section is reasonably
15 available to make or to object to the making of an anatomical
16 gift.

17 Section 10. [NEW MATERIAL] MANNER OF MAKING, AMENDING OR
18 REVOKING ANATOMICAL GIFT OF DECEDENT'S BODY OR PART.--

19 A. A person authorized to make an anatomical gift
20 pursuant to Section 9 of the Revised Uniform Anatomical Gift
21 Act may make an anatomical gift by a document of gift signed by
22 the person making the gift or by that person's oral
23 communication that is electronically recorded or is
24 contemporaneously reduced to a record and signed by the
25 individual receiving the oral communication.

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1 B. Subject to the provisions of Subsection C of
2 this section, an anatomical gift by a person authorized
3 pursuant to Section 9 of the Revised Uniform Anatomical Gift
4 Act may be amended or revoked orally or in a record by any
5 member of a prior class who is reasonably available. If more
6 than one member of the prior class is reasonably available, the
7 gift made by a person authorized pursuant to Section 9 of that
8 act may be:

9 (1) amended only if a majority of the
10 reasonably available members agree to the amending of the gift;
11 or

12 (2) revoked only if a majority of the
13 reasonably available members agree to the revoking of the gift
14 or if they are equally divided as to whether to revoke the
15 gift.

16 C. A revocation pursuant to Subsection B of this
17 section is effective only if, before an incision has been made
18 to remove a part from the donor's body or before invasive
19 procedures have begun to prepare the recipient, the procurement
20 organization, transplant hospital or physician or technician
21 knows of the revocation.

22 Section 11. [NEW MATERIAL] PERSONS THAT MAY RECEIVE
23 ANATOMICAL GIFT--PURPOSE OF ANATOMICAL GIFT.--

24 A. An anatomical gift may be made to the following
25 persons named in the document of gift:

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1 (1) a hospital; accredited medical school,
2 dental school, college or university; organ procurement
3 organization; or other appropriate person, for research or
4 education;

5 (2) subject to the provisions of Subsection B
6 of this section, an individual designated by the person making
7 the anatomical gift if the individual is the recipient of the
8 part; and

9 (3) an eye bank or tissue bank.

10 B. If an anatomical gift to an individual pursuant
11 to Paragraph (2) of Subsection A of this section cannot be
12 transplanted into the individual, the part passes in accordance
13 with Subsection G of this section in the absence of an express,
14 contrary indication by the person making the anatomical gift.

15 C. If an anatomical gift of one or more specific
16 parts or of all parts is made in a document of gift that does
17 not name a person described in Subsection A of this section but
18 identifies the purpose for which an anatomical gift may be
19 used, the following rules apply:

20 (1) if the part is an eye and the gift is for
21 the purpose of transplantation or therapy, the gift passes to
22 the appropriate eye bank;

23 (2) if the part is tissue and the gift is for
24 the purpose of transplantation or therapy, the gift passes to
25 the appropriate tissue bank;

1 (3) if the part is an organ and the gift is
2 for the purpose of transplantation or therapy, the gift passes
3 to the appropriate organ procurement organization as custodian
4 of the organ; and

5 (4) if the part is an organ, an eye or tissue
6 and the gift is for the purpose of research or education, the
7 gift passes to the appropriate procurement organization.

8 D. For the purpose of Subsection C of this section,
9 if there is more than one purpose of an anatomical gift set
10 forth in the document of gift but the purposes are not set
11 forth in any priority, the gift shall be used for
12 transplantation or therapy, if suitable. If the gift cannot be
13 used for transplantation or therapy, the gift may be used for
14 research or education.

15 E. If an anatomical gift of one or more specific
16 parts is made in a document of gift that does not name a person
17 described in Subsection A of this section and does not identify
18 the purpose of the gift, the gift may be used only for
19 transplantation or therapy, and the gift passes in accordance
20 with Subsection G of this section.

21 F. If a document of gift specifies only a general
22 intent to make an anatomical gift by words such as "donor",
23 "organ donor" or "body donor", or by a symbol or statement of
24 similar import, the gift may be used only for transplantation
25 or therapy and the gift passes in accordance with Subsection G

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1 of this section.

2 G. For purposes of Subsections B, E and F of this
3 section the following rules apply:

4 (1) if the part is an eye, the gift passes to
5 the appropriate eye bank;

6 (2) if the part is tissue, the gift passes to
7 the appropriate tissue bank; and

8 (3) if the part is an organ, the gift passes
9 to the appropriate organ procurement organization as custodian
10 of the organ.

11 H. An anatomical gift of an organ for
12 transplantation or therapy, other than an anatomical gift
13 pursuant to Paragraph (2) of Subsection A of this section,
14 passes to the organ procurement organization as custodian of
15 the organ.

16 I. If an anatomical gift does not pass pursuant to
17 Subsections A through H of this section or the decedent's body
18 or part is not used for transplantation, therapy, research or
19 education, custody of the body or part passes to the person
20 under obligation to dispose of the body or part.

21 J. A person may not accept an anatomical gift if
22 the person knows that the gift was not effectively made
23 pursuant to Section 5 or 10 of the Revised Uniform Anatomical
24 Gift Act or if the person knows that the decedent made a
25 refusal pursuant to Section 7 of that act that was not revoked.

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1 For purposes of this subsection, if a person knows that an
2 anatomical gift was made on a document of gift, the person is
3 deemed to know of any amendment or revocation of the gift or
4 any refusal to make an anatomical gift on the same document of
5 gift.

6 K. Except as otherwise provided in Paragraph (2) of
7 Subsection A of this section, nothing in the Revised Uniform
8 Anatomical Gift Act affects the allocation of organs for
9 transplantation or therapy.

10 Section 12. [NEW MATERIAL] SEARCH AND NOTIFICATION.--

11 A. The following persons shall make a reasonable
12 search of an individual who the person reasonably believes is
13 dead or near death for a document of gift or other information
14 identifying the individual as a donor or as an individual who
15 made a refusal:

16 (1) a law enforcement officer, firefighter,
17 paramedic or other emergency rescuer finding the individual;
18 and

19 (2) if no other source of the information is
20 immediately available, a hospital, as soon as practical after
21 the individual's arrival at the hospital.

22 B. If a document of gift or a refusal to make an
23 anatomical gift is located by the search required by Paragraph
24 (1) of Subsection A of this section and the individual or
25 deceased individual to whom it relates is taken to a hospital,

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1 the person responsible for conducting the search shall send the
2 document of gift or refusal to the hospital.

3 C. A person is not subject to criminal or civil
4 liability for failing to discharge the duties imposed by this
5 section but may be subject to administrative sanctions.

6 Section 13. [NEW MATERIAL] DELIVERY OF DOCUMENT OF GIFT
7 NOT REQUIRED--RIGHT TO EXAMINE.--

8 A. A document of gift need not be delivered during
9 the donor's lifetime to be effective.

10 B. Upon or after an individual's death, a person in
11 possession of a document of gift or a refusal to make an
12 anatomical gift with respect to the individual shall allow
13 examination and copying of the document of gift or refusal by a
14 person authorized to make or object to the making of an
15 anatomical gift with respect to the individual or by a person
16 to which the gift could pass pursuant to Section 11 of the
17 Revised Uniform Anatomical Gift Act.

18 Section 14. [NEW MATERIAL] RIGHTS AND DUTIES OF
19 PROCUREMENT ORGANIZATION AND OTHERS.--

20 A. When a hospital refers an individual at or near
21 death to a procurement organization, the organization shall
22 make a reasonable search of the records of the motor vehicle
23 division of the taxation and revenue department and any donor
24 registry that it knows exists for the geographical area in
25 which the individual resides to ascertain whether the

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1 individual has made an anatomical gift.

2 B. A procurement organization shall be allowed
3 reasonable access to information in the records of the motor
4 vehicle division of the taxation and revenue department to
5 ascertain whether an individual at or near death is a donor.

6 C. When a hospital refers an individual at or near
7 death to a procurement organization, the organization may
8 conduct any reasonable examination necessary to ensure the
9 medical suitability of a part that is or could be the subject
10 of an anatomical gift for transplantation, therapy, research or
11 education from a donor or a prospective donor. During the
12 examination period, measures necessary to ensure the medical
13 suitability of the part may not be withdrawn unless the
14 hospital or procurement organization knows that the individual
15 expressed a contrary intent.

16 D. Unless prohibited by law other than the Revised
17 Uniform Anatomical Gift Act, at any time after a donor's death,
18 the person to which a part passes pursuant to Section 11 of
19 that act may conduct any reasonable examination necessary to
20 ensure the medical suitability of the body or part for its
21 intended purpose.

22 E. Unless prohibited by law other than the Revised
23 Uniform Anatomical Gift Act, an examination pursuant to
24 Subsection C or D of this section may include an examination of
25 all medical and dental records of the donor or prospective

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1 donor.

2 F. Upon the death of a minor who was a donor or had
3 signed a refusal, unless a procurement organization knows the
4 minor is emancipated, the procurement organization shall
5 conduct a reasonable search for the parents of the minor and
6 provide the parents with an opportunity to revoke or amend the
7 anatomical gift or revoke the refusal.

8 G. Upon referral by a hospital pursuant to
9 Subsection A of this section, a procurement organization shall
10 make a reasonable search for any person listed in Section 9 of
11 the Revised Uniform Anatomical Gift Act having priority to make
12 an anatomical gift on behalf of a prospective donor. If a
13 procurement organization receives information that an
14 anatomical gift to any other person was made, amended or
15 revoked, it shall promptly advise the other person of all
16 relevant information.

17 H. Subject to the provisions of Subsection I of
18 Section 11 and Section 23 of the Revised Uniform Anatomical
19 Gift Act, the rights of the person to which a part passes
20 pursuant to Section 11 of that act are superior to the rights
21 of all others with respect to the part. The person may accept
22 or reject an anatomical gift in whole or in part. Subject to
23 the terms of the document of gift and the Revised Uniform
24 Anatomical Gift Act, a person that accepts an anatomical gift
25 of an entire body may allow embalming, burial or cremation, and

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1 use of remains in a funeral service. If the gift is of a part,
2 the person to which the part passes pursuant to Section 11 of
3 the Revised Uniform Anatomical Gift Act, upon the death of the
4 donor and before embalming, burial or cremation, shall cause
5 the part to be removed without unnecessary mutilation.

6 I. Neither the physician who attends the decedent
7 at death nor the physician who determines the time of the
8 decedent's death may participate in the procedures for removing
9 or transplanting a part from the decedent.

10 J. A physician or technician may remove a donated
11 part from the body of a donor that the physician or technician
12 is qualified to remove.

13 Section 15. [NEW MATERIAL] COORDINATION OF PROCUREMENT
14 AND USE.--Each hospital in this state shall enter into
15 agreements or affiliations with procurement organizations for
16 coordination of procurement and use of anatomical gifts.

17 Section 16. [NEW MATERIAL] SALE OR PURCHASE OF PARTS
18 PROHIBITED.--

19 A. Except as otherwise provided in Subsection B of
20 this section, a person who for valuable consideration,
21 knowingly purchases or sells a part for transplantation or
22 therapy if removal of a part from an individual is intended to
23 occur after the individual's death commits a third degree
24 felony and upon conviction is subject to a fine not exceeding
25 five thousand dollars (\$5,000) or imprisonment not exceeding

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1 six years, or both.

2 B. A person may charge a reasonable amount for the
3 removal, processing, preservation, quality control, storage,
4 transportation, implantation or disposal of a part.

5 Section 17. [NEW MATERIAL] OTHER PROHIBITED ACTS.--A
6 person who, in order to obtain a financial gain, intentionally
7 falsifies, forges, conceals, defaces or obliterates a document
8 of gift, an amendment or revocation of a document of gift, or a
9 refusal, commits a third degree felony and upon conviction is
10 subject to a fine not exceeding five thousand dollars (\$5,000)
11 or imprisonment not exceeding six years, or both.

12 Section 18. [NEW MATERIAL] IMMUNITY.--

13 A. A person that acts in accordance with the
14 Revised Uniform Anatomical Gift Act or with the applicable
15 anatomical gift law of another state, or attempts in good faith
16 to do so, is not liable for the act in a civil action, criminal
17 prosecution or administrative proceeding.

18 B. Neither the person making an anatomical gift nor
19 the donor's estate is liable for any injury or damage that
20 results from the making or use of the gift.

21 C. In determining whether an anatomical gift has
22 been made, amended or revoked pursuant to the Revised Uniform
23 Anatomical Gift Act, a person may rely upon representations of
24 an individual listed in Paragraph (2), (3), (4), (5), (6), (7)
25 or (8) of Subsection A of Section 9 of that act relating to the

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1 individual's relationship to the donor or prospective donor
2 unless the person knows that the representation is untrue.

3 Section 19. [NEW MATERIAL] LAW GOVERNING VALIDITY--CHOICE
4 OF LAW AS TO EXECUTION OF DOCUMENT OF GIFT--PRESUMPTION OF
5 VALIDITY.--

6 A. A document of gift is valid if executed in
7 accordance with:

- 8 (1) the Revised Uniform Anatomical Gift Act;
9 (2) the laws of the state or country where it
10 was executed; or
11 (3) the laws of the state or country where the
12 person making the anatomical gift was domiciled, has a place of
13 residence or was a national at the time the document of gift
14 was executed.

15 B. If a document of gift is valid pursuant to this
16 section, the law of this state governs the interpretation of
17 the document of gift.

18 C. A person may presume that a document of gift or
19 amendment of an anatomical gift is valid unless that person
20 knows that it was not validly executed or was revoked.

21 Section 20. [NEW MATERIAL] DONOR REGISTRY.--

22 A. The motor vehicle division of the taxation and
23 revenue department shall establish a donor registry pursuant to
24 the provisions of Subsection B of Section 66-5-10 NMSA 1978.

25 B. The motor vehicle division of the taxation and

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1 revenue department shall cooperate with a person that
2 administers any donor registry that this state establishes,
3 contracts for or recognizes for the purpose of transferring to
4 the donor registry all relevant information regarding a donor's
5 making, amendment to or revocation of an anatomical gift.

6 C. A donor registry shall:

7 (1) allow a donor or other person authorized
8 pursuant to Section 4 of the Revised Uniform Anatomical Gift
9 Act to include on the donor registry a statement or symbol that
10 the donor has made, amended or revoked an anatomical gift;

11 (2) be accessible to a procurement
12 organization to allow it to obtain relevant information on the
13 donor registry to determine, at or near death of the donor or a
14 prospective donor, whether the donor or prospective donor has
15 made, amended or revoked an anatomical gift; and

16 (3) be accessible for purposes of Paragraphs
17 (1) and (2) of this subsection seven days a week on a twenty-
18 four-hour basis.

19 D. Personally identifiable information on a donor
20 registry about a donor or prospective donor may not be used or
21 disclosed without the express consent of the donor, prospective
22 donor or person who made the anatomical gift for any purpose
23 other than to determine, at or near death of the donor or
24 prospective donor, whether the donor or prospective donor has
25 made, amended or revoked an anatomical gift.

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1 E. This section does not prohibit any person from
2 creating or maintaining a donor registry that is not
3 established by or under contract with the state. Any such
4 registry shall comply with the provisions of Subsections C and
5 D of this section.

6 Section 21. [NEW MATERIAL] EFFECT OF ANATOMICAL GIFT ON
7 ADVANCE HEALTH-CARE DIRECTIVE.--

8 A. As used in this section:

9 (1) "advance health-care directive" means a
10 power of attorney for health care, a health-care directive made
11 pursuant to the provisions of the Uniform Health-Care Decisions
12 Act or a record signed by a prospective donor containing the
13 prospective donor's direction concerning a health-care decision
14 for the prospective donor;

15 (2) "declaration" means a record signed by a
16 prospective donor specifying the circumstances under which a
17 life support system may be withheld or withdrawn from the
18 prospective donor; and

19 (3) "health-care decision" means any decision
20 made regarding the health care of the prospective donor.

21 B. If a prospective donor has a declaration or
22 advance health-care directive, measures necessary to ensure the
23 medical suitability of an organ for transplantation or therapy
24 may not be withheld or withdrawn from the prospective donor,
25 unless the declaration expressly provides to the contrary.

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1 Section 22. [NEW MATERIAL] COOPERATION BETWEEN OFFICE OF
2 THE STATE MEDICAL INVESTIGATOR AND PROCUREMENT ORGANIZATION.--

3 A. The office of the state medical investigator
4 shall cooperate with procurement organizations to maximize the
5 opportunity to recover anatomical gifts for the purpose of
6 transplantation, therapy, research or education.

7 B. If the office of the state medical investigator
8 receives notice from a procurement organization that an
9 anatomical gift might be available or was made with respect to
10 a decedent whose body is under the jurisdiction of the office
11 of the state medical investigator and a post-mortem examination
12 is going to be performed, unless the office of the state
13 medical investigator denies recovery in accordance with Section
14 23 of the Revised Uniform Anatomical Gift Act, the office of
15 the state medical investigator or its designee shall conduct a
16 post-mortem examination of the body or the part in a manner and
17 within a period compatible with its preservation for the
18 purposes of the anatomical gift.

19 C. A part may not be removed from the body of a
20 decedent under the jurisdiction of the office of the state
21 medical investigator for transplantation, therapy, research or
22 education unless the part is the subject of an anatomical gift.
23 The body of a decedent under the jurisdiction of the office of
24 the state medical investigator may not be delivered to a person
25 for research or education unless the body is the subject of an

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1 anatomical gift. This subsection does not preclude the office
2 of the state medical investigator from performing the medico-
3 legal investigation upon the body or parts of a decedent under
4 the jurisdiction of the office of the state medical
5 investigator.

6 Section 23. [NEW MATERIAL] FACILITATION OF ANATOMICAL
7 GIFT FROM DECEDENT WHOSE BODY IS UNDER JURISDICTION OF THE
8 OFFICE OF THE STATE MEDICAL INVESTIGATOR.--

9 A. Upon request of a procurement organization, the
10 office of the state medical investigator shall release to the
11 procurement organization the name, contact information and
12 available medical and social history of a decedent whose body
13 is under the jurisdiction of the office of the state medical
14 investigator. If the decedent's body or part is medically
15 suitable for transplantation, therapy, research or education,
16 the office of the state medical investigator shall release
17 post-mortem examination results to the procurement
18 organization. The procurement organization may make a
19 subsequent disclosure of the post-mortem examination results or
20 other information received from the office of the state medical
21 investigator only if relevant to transplantation or therapy.

22 B. The office of the state medical investigator may
23 conduct a medico-legal investigation by reviewing all medical
24 records, laboratory test results, x-rays, other diagnostic
25 results and other information that any person possesses about a

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1 donor or prospective donor whose body is under the jurisdiction
2 of the office of the state medical investigator that the office
3 of the state medical investigator determines may be relevant to
4 the investigation.

5 C. A person that has any information requested by
6 the office of the state medical investigator pursuant to
7 Subsection B of this section shall provide that information as
8 expeditiously as possible to allow the office of the state
9 medical investigator to conduct the medico-legal investigation
10 within a period compatible with the preservation of parts for
11 the purpose of transplantation, therapy, research or education.

12 D. If an anatomical gift has been or might be made
13 of a part of a decedent whose body is under the jurisdiction of
14 the office of the state medical investigator and a post-mortem
15 examination is not required, or the office of the state medical
16 investigator determines that a post-mortem examination is
17 required but that the recovery of the part that is the subject
18 of an anatomical gift will not interfere with the examination,
19 the office of the state medical investigator and the
20 procurement organization shall cooperate in the timely removal
21 of the part from the decedent for the purpose of
22 transplantation, therapy, research or education.

23 E. If an anatomical gift of a part from the
24 decedent under the jurisdiction of the office of the state
25 medical investigator has been or might be made, but the office

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1 of the state medical investigator initially believes that the
2 recovery of the part could interfere with the post-mortem
3 investigation into the decedent's cause or manner of death, the
4 office of the state medical investigator shall consult with the
5 procurement organization or physician or technician designated
6 by the procurement organization about the proposed recovery.
7 After consultation, the office of the state medical
8 investigator may allow the recovery.

9 F. Following the consultation pursuant to
10 Subsection E of this section, in the absence of mutually
11 agreed-upon protocols to resolve conflict between the office of
12 the state medical investigator and the procurement
13 organization, if the office of the state medical investigator
14 intends to deny recovery, the office of the state medical
15 investigator or its designee, at the request of the procurement
16 organization, shall attend the removal procedure for the part
17 before making a final determination not to allow the
18 procurement organization to recover the part. During the
19 removal procedure, the office of the state medical investigator
20 or its designee may allow recovery by the procurement
21 organization to proceed, or, if the office of the state medical
22 investigator or its designee reasonably believes that the part
23 may be involved in determining the decedent's cause or manner
24 of death, may deny recovery by the procurement organization.

25 G. If the office of the state medical investigator

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1 or its designee denies recovery pursuant to Subsection F of
2 this section, the office of the state medical investigator or
3 its designee shall:

4 (1) explain in a record the specific reasons
5 for not allowing recovery of the part;

6 (2) include the specific reasons in the
7 records of the office of the state medical investigator; and

8 (3) provide a record with the specific reasons
9 to the procurement organization.

10 H. If the office of the state medical investigator
11 or its designee allows recovery of a part pursuant to
12 Subsection D, E or F of this section, the procurement
13 organization, upon request, shall cause the physician or
14 technician who removes the part to provide the office of the
15 state medical investigator with a record describing the
16 condition of the part, a biopsy, a photograph and any other
17 information and observations that would assist in the
18 post-mortem examination.

19 I. If the office of the state medical investigator
20 or its designee is required to be present at a removal
21 procedure pursuant to Subsection F of this section, upon
22 request the procurement organization requesting the recovery of
23 the part shall reimburse the office of the state medical
24 investigator or its designee for the additional costs incurred
25 in complying with the provisions of Subsection F of this

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1 section.

2 Section 24. [NEW MATERIAL] UNIFORMITY OF APPLICATION AND
3 CONSTRUCTION.--In applying and construing the Revised Uniform
4 Anatomical Gift Act, consideration shall be given to the need
5 to promote uniformity of the law with respect to its subject
6 matter among states that enact it.

7 Section 25. [NEW MATERIAL] RELATION TO ELECTRONIC
8 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.--The Revised
9 Uniform Anatomical Gift Act modifies, limits and supersedes the
10 Electronic Signatures in Global and National Commerce Act, 15
11 U.S.C. Section 7001 et seq., but does not modify, limit or
12 supersede Section 101(a) of that act, 15 U.S.C. Section 7001,
13 or authorize electronic delivery of any of the notices
14 described in Section 103(b) of that act, 15 U.S.C. Section
15 7003(b).

16 Section 26. Section 12-2-4 NMSA 1978 (being Laws 1993,
17 Chapter 174, Section 1) is amended to read:

18 "12-2-4. DETERMINATION OF DEATH.--

19 A. For all medical, legal and statutory purposes,
20 death occurs when an individual has sustained either:

21 (1) irreversible cessation of circulatory or
22 respiratory functions; or

23 (2) irreversible cessation of all functions of
24 the entire brain, including the brain stem.

25 B. A determination of death shall be made in

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1 accordance with accepted medical standards.

2 C. Death is to be pronounced pursuant to the
3 provisions of Subsection A of this section before artificial
4 means of supporting circulatory or respiratory functions are
5 terminated and before any vital organ is removed for purposes
6 of transplantation therapy, research or education in compliance
7 with the provisions of the Revised Uniform Anatomical Gift Act.

8 D. The definition of death set forth in Subsection
9 A of this section is to be utilized for all purposes in this
10 state, including civil and criminal actions, notwithstanding
11 any other law to the contrary."

12 Section 27. Section 14-16-3 NMSA 1978 (being Laws 2001,
13 Chapter 131, Section 3) is amended to read:

14 "14-16-3. SCOPE.--

15 (a) Except as otherwise provided in Subsection (b),
16 the Uniform Electronic Transactions Act applies to electronic
17 records and electronic signatures relating to a transaction.

18 (b) The Uniform Electronic Transactions Act does
19 not apply to:

20 (1) a transaction to the extent it is governed
21 by:

22 (i) a law governing the creation and
23 execution of wills, codicils or testamentary trusts;

24 (ii) the Uniform Commercial Code, other
25 than Sections 55-1-107 and 55-1-206 NMSA 1978 and Chapter 55,

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1 Articles 2 and 2A NMSA 1978;

2 (iii) the Revised Uniform Anatomical
3 Gift Act;

4 (iv) the Uniform Health-Care Decisions
5 Act; or

6 (v) a statute, regulation or other rule
7 of law that governs adoption, divorce or other family law
8 matters;

9 (2) a notice concerning:

10 (i) the cancellation or termination of
11 utility services, including water, heat or power services;

12 (ii) default, acceleration,
13 repossession, foreclosure, eviction or the right to cure, under
14 a credit agreement secured by or a rental agreement for a
15 primary residence of an individual; or

16 (iii) the cancellation or termination of
17 health insurance benefits or life insurance benefits, but not
18 including annuities.

19 (c) The Uniform Electronic Transactions Act applies
20 to an electronic record or electronic signature otherwise
21 excluded from the application of that act under Subsection (b)
22 to the extent it is governed by a law other than those
23 specified in Subsection (b).

24 (d) A transaction subject to the Uniform Electronic
25 Transactions Act is also subject to other applicable

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1 substantive law."

2 Section 28. Section 66-2-7.1 NMSA 1978 (being Laws 1995,
3 Chapter 135, Section 4, as amended) is amended to read:

4 "66-2-7.1. MOTOR VEHICLE-RELATED RECORDS--
5 CONFIDENTIAL.--

6 A. It is unlawful for any department employee or
7 contractor or for any former department employee or contractor
8 to disclose to any person other than another employee of the
9 department any personal information about an individual
10 obtained by the department in connection with a driver's
11 license or permit, the titling or registration of a vehicle or
12 an identification card issued by the department pursuant to the
13 Motor Vehicle Code except:

14 (1) to the individual or the individual's
15 authorized representative;

16 (2) for use by any governmental agency,
17 including any court, in carrying out its functions or by any
18 private person acting on behalf of the government;

19 (3) for use in connection with matters of
20 motor vehicle and driver safety or theft; motor vehicle
21 emissions; performance monitoring of motor vehicles, motor
22 vehicle parts and dealers; motor vehicle market research
23 activities, including survey research; motor vehicle production
24 alterations, recalls or advisories; and removal of non-owner
25 records from original owner records of motor vehicle

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1 manufacturers;

2 (4) for use in research activities and for use
3 in producing statistical reports, so long as the personal
4 information is not published, redisclosed or used to contact
5 individuals;

6 (5) for use by any insurer or insurance
7 support organization or by a self-insured entity or its agents,
8 employees or contractors in connection with claims
9 investigation activities, antifraud activities, rating or
10 underwriting;

11 (6) for providing notice to owners of towed or
12 impounded vehicles;

13 (7) for use by an employer or its agent or
14 insurer in obtaining or verifying information relating to a
15 holder of a commercial driver's license;

16 (8) for use by any requester if the requester
17 demonstrates that it has obtained the written consent of the
18 individual to whom the information pertains;

19 (9) for use by an insured state-chartered or
20 federally chartered credit union; an insured state or national
21 bank; an insured state or federal savings and loan association;
22 or an insured savings bank, but only:

23 (a) to verify the accuracy of personal
24 information submitted by an individual to the credit union,
25 bank, savings and loan association or savings bank; and

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1 (b) if the information as submitted is
2 not correct or is no longer correct, to obtain the correct
3 information, but only for the purpose of preventing fraud by
4 pursuing legal remedies against or recovering on a debt or
5 security interest from the individual;

6 (10) for providing organ donor information as
7 provided in the Revised Uniform Anatomical Gift Act or Section
8 66-5-10 NMSA 1978; or

9 (11) for providing the names and addresses of
10 all lienholders and owners of record of abandoned vehicles to
11 storage facilities or wrecker yards for the purpose of
12 providing notice as required in Section 66-3-121 NMSA 1978.

13 B. Any person who violates the provisions of this
14 section is guilty of a misdemeanor and upon conviction shall be
15 sentenced in accordance with the provisions of Section 31-19-1
16 NMSA 1978."

17 Section 29. Section 66-5-10 NMSA 1978 (being Laws 1978,
18 Chapter 35, Section 232, as amended) is amended to read:

19 "66-5-10. APPLICATION FOR LICENSE--INFORMATION--TRANSFER
20 TO LICENSE.--

21 A. Within the forms prescribed by the department
22 for applications and licenses of drivers of motor vehicles, a
23 space shall be provided to show whether the applicant is a
24 donor as provided in the Revised Uniform Anatomical Gift Act.
25 Anyone applying for a license may, if [he] the applicant

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1 desires, indicate [~~his~~] the applicant's donor status on the
2 space provided on the application, and this information, if
3 given by an applicant, shall be shown upon the license issued.
4 The form and driver's license shall be signed by the donor in
5 the presence of a witness who shall also sign the form in the
6 donor's presence. The department shall, as soon as
7 practicable, include the following donor statement on the
8 application form:

9 "I, _____, hereby make an

10 (Name of applicant/donor)

11 anatomical gift effective upon my death. A
12 medical evaluation at the time of my death shall
13 determine the organs and tissues suitable for
14 donation.

15 _____

16 (Signature of donor)

17 _____

18 (Signature of parent or guardian is required if the donor
19 is under sixteen years of age.)".

20 B. The department shall mark the donor status on
21 each person's driver's license record and shall retain each
22 application form or its image of a person who wishes to be a
23 donor. The department shall create and maintain a statewide
24 donor registry and shall provide on-line computer terminal
25 access to the donor registry to organ procurement [~~agencies~~]

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1 organizations and procurement organizations, as defined in the
2 Revised Uniform Anatomical Gift Act. Authorized hospital or
3 organ and tissue donor program personnel, immediately prior to
4 or after a donor's death, may request verification of the
5 donor's status from the department and may obtain a copy of the
6 application from the department."

7 Section 30. Section 66-5-401 NMSA 1978 (being Laws 1978,
8 Chapter 35, Section 328, as amended) is amended to read:

9 "66-5-401. IDENTIFICATION CARDS.--

10 A. A person who does not have a valid New Mexico
11 driver's license may be issued an identification card by the
12 department certified by the applicant as to true name, correct
13 age and other identifying data as the department may require.
14 Every application for an identification card shall be signed by
15 the applicant or the applicant's parent or guardian. The
16 secretary may, for good cause, revoke or deny the issuance of
17 an identification card.

18 B. Within the forms prescribed by the department
19 for identification card applications, a space shall be provided
20 to show whether the applicant is a donor as provided in the
21 Revised Uniform Anatomical Gift Act. A person applying for an
22 identification card may indicate that person's status on the
23 space provided on the application. The donor status indicated
24 by the applicant shall be displayed on the identification card.
25 The form and identification card shall be signed by the donor

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1 in the presence of a witness who shall also sign the form in
2 the donor's presence."

3 Section 31. Section 66-7-506.1 NMSA 1978 (being Laws
4 2000, Chapter 54, Section 11) is amended to read:

5 "66-7-506.1. DWI PREVENTION AND EDUCATION PROGRAM--ORGAN
6 DONATION.--DWI prevention and education programs for
7 instruction permits and driver's licenses shall include
8 information on organ donation and the provisions of the Revised
9 Uniform Anatomical Gift Act."

10 Section 32. REPEAL.--Sections 24-6A-1 through 24-6A-15
11 NMSA 1978 (being Laws 1995, Chapter 116, Sections 1 through 6,
12 Laws 2000, Chapter 54, Section 8, Laws 1995, Chapter 116,
13 Section 7, Laws 2002, Chapter 42, Section 3, Laws 1995, Chapter
14 116, Sections 8 and 9, Laws 2000, Chapter 54, Sections 7 and 6
15 and Laws 1995, Chapter 116, Sections 10 through 15, as amended)
16 are repealed.

17 Section 33. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2007.